

ORIGINAL

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

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In the Matter of)

Tariffs Implementing)
Access Charge Reform)

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY
CC Docket No. 97-250

MCI OPPOSITION TO SBC PETITION FOR RECONSIDERATION

I. Introduction

Pursuant to Section 1.106 of the Commission's Rules,¹ MCI Telecommunications Corporation (MCI) hereby submits its opposition to the petition for reconsideration of the Access Reform Tariff Order filed by SBC Communications, Inc. (SBC) on July 1, 1998. The Commission should deny SBC's petition for reconsideration and affirm the Access Reform Tariff Order's finding that SBC's "non-primary" line definition and methodology were patently unreasonable.

II. The Commission Correctly Found that SBC's "Non-Primary" Line Definition was Patently Unreasonable

In its access reform tariff filing, SBC proposed tariff language that classified a line as non-primary only when more than one line was billed to the same customer

¹47 C.F.R. § 1.106.

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account. If a household had multiple lines, but each line was billed to a separate account, each of these lines was classified as “primary.”

In the Access Reform Tariff Order, the Commission found that SBC’s non-primary line definition was patently unreasonable because it failed to identify additional residential lines even when the lines were billed to the same name and location.² SBC requests that the Commission reconsider this finding, arguing that the Access Reform Tariff Order improperly promulgated a “new definition” of non-primary lines.³ SBC contends that this “new definition” could only be adopted in the CC Docket No. 97-181 Defining Primary Lines rulemaking, which the Commission has not completed.⁴

The Commission should reject SBC’s argument. The Commission did not adopt a new definition of nonprimary lines, but simply acted pursuant to its well-established authority to make interpretations of its rules and orders in a tariff investigation.⁵ As the Commission discussed in the Designation Order, the purpose of the investigation was to determine whether the LECs’ nonprimary line definitions were reasonable and whether those definitions were applied in a reasonable manner.⁶ The Commission gave SBC full

²Access Reform Tariff Order at ¶38.

³SBC Petition at 2.

⁴Id. at 2-3.

⁵In the Matter of 1997 Annual Access Tariff Filings, Memorandum Opinion and Order, CC Docket No. 97-149, rel. December 31, 1997, at ¶173.

⁶In the Matter of Tariffs Implementing Access Charge Reform, Order Designating Issues for Investigation and Order on Reconsideration, CC Docket No. 97-150, rel. January 28, 1998, at ¶14 (Designation Order).

notice and opportunity to comment on its tentative conclusion that the price cap LECs, including SBC, “may have under identified non-primary residential and BRI ISDN lines” due to “definitions that do not reasonably identify non-primary residential lines, or to the way in which the definitions are applied.”⁷ The fact that the Commission had not yet adopted a definition of nonprimary lines did not give SBC or the other LECs free rein to adopt whatever non-primary line definition they wished, no matter how unreasonable, or to apply these definitions in an unreasonable manner.

The Commission correctly found that SBC’s definition was unreasonable, at least when applied to Pacific Bell. The purpose of the higher SLC cap for nonprimary lines, one of the major changes to the access charge regime adopted in the Access Reform Order, was to ensure that loop costs are “assigned, where possible, to those customers who benefit from the services provided by the local loop.”⁸ By using a definition that allowed multiple lines with the same billing name and address to be classified as primary, and applying this definition to a LEC whose practice was to assign most additional lines to separate accounts, SBC effectively nullified the Access Reform Order’s primary/nonprimary line distinction. As shown in Figure I of the order, application of SBC’s definition to Pacific Bell resulted in almost none of Pacific Bell’s residential lines being designated as nonprimary -- only 2.67 percent, the lowest of any LEC. Restricting the application of the nonprimary line SLC to such a small number of

⁷Designation Order at ¶16.

⁸In the Matter of Access Charge Reform, First Report and Order, CC Docket No. 96-262, rel. May 16, 1997, at ¶77 (Access Reform Order).

loops, in a state where Pacific Bell has claimed that over 20 percent of its customers have additional lines,⁹ was clearly inconsistent with the Access Reform Order's requirement that costs be assigned to "those customers that benefit from the services provided by the local loop."

III. The Commission's Prescription Was Reasonable

Having found that application of SBC's definition resulted in a substantial undercount of Pacific Bell's nonprimary lines, the Commission prescribed a revised nonprimary line count of 14,728,272 nonprimary lines, an increase of 11,541,877 over the nonprimary line count used by Pacific.¹⁰ The Commission developed this prescription using a staff-developed "additional line study," which in turn drew on research conducted by PNR and Associates. The Commission determined that it was reasonable to prescribe a non-primary line count equal to 70 percent of the nonprimary line count estimated by the additional line study because, on average, the price cap LECs had reported 71.45 percent of the non-primary lines identified by the additional line study.¹¹

SBC objects to the Commission's use of the additional line study, contending that it was given no opportunity to comment on the study. In its petition for reconsideration, however, SBC offers no substantive criticism of the staff's study. It

⁹Access Reform Tariff Order at ¶25.

¹⁰Id. at ¶31.

¹¹Id. at ¶29.

suggests only that “if the [additional line] study were based on additional lines for the same customer account, the [non-primary line] percentage would be much closer to that for Pacific.”¹² This is, however, irrelevant. It is precisely because the Commission has found Pacific’s definition to be unreasonable that the Commission must prescribe a higher nonprimary line count.

The staff’s study provides a reasonable estimate of the nonprimary line count that would have resulted had Pacific used a reasonable nonprimary line definition. As Pacific admits, the Commission could only determine the precise degree of undercounting if it had access to Pacific’s billing records.¹³ Without access to these billing records, the Commission had to develop its prescription using the additional line study and other evidence based on public data sources.

Notably, SBC does not argue that the Commission’s prescription overstates the nonprimary line count that would result if a reasonable nonprimary line definition were applied to Pacific’s actual billing records. This is not surprising, given that the Commission’s prescription is, for several reasons, conservative. First, the additional line study’s non-primary line percentage for Pacific Bell -- 17.61 percent -- is less than the nonprimary line percentage indicated by the other studies cited by the Commission and by Pacific’s own public statements. Second, the additional line study only counts the number of households with additional lines, not the total number of additional lines.

¹²SBC Petition at 8.

¹³*Id.* at 7 (“To count non-primary lines as the Commission’s new definition requires, Pacific will need to internally investigate each account to determine if the individual records qualify for inclusion in the non-primary line count.”)

Third, and most importantly, the Commission chose to prescribe a nonprimary line count equal to only 70 percent of the already-conservative figure estimated by the additional line study.

IV. The Commission's Decision to Require SBC to Refund Overcharges was Not Inconsistent with the Order's Guidelines for Refunds

Finally, SBC argues that the required refund is unwarranted "under the MO&O's own guidelines for refunds."¹⁴ Noting that the Order's guidelines permitted "offsets" when the "same general group of customers" was affected by rates that were too high and rates that were lower than they could have been, SBC contends that a refund of overcharges resulting from misclassification of residential lines is unwarranted because "the IXC's that will be recipients of the refund will also be the same entities that were not charged the [higher] non-primary line [PICC] rate."¹⁵

While it is true that IXC's were billed fewer nonprimary line PICC's, any savings were more than offset by other rates, primarily the multiline business PICC, that were substantially inflated. The net result of Pacific's misclassification of residential lines was to overcharge IXC's by \$8.7 million during the period the unlawful rates were in effect.¹⁶ Even if the Commission had permitted Pacific Bell to count the reduced

¹⁴Id. at 10.

¹⁵Id.

¹⁶By misclassifying 11,541,877 lines as primary, and assuming the \$3.50 primary line SLC for these lines in place of the \$5.00 nonprimary SLC, Pacific understated end user revenues by \$17.3 million on an annualized basis, and thus overstated revenues to be recovered from IXC's by the same amount. IXC's were therefore overcharged \$8.7 million

nonprimary line PICC payments as an offset, Pacific Bell would still have been required to refund the \$8.7 million to the IXC. In applying its refund guidelines, the Commission granted the LECs a full exemption from their refund obligation only in cases where the unlawful rates paid by the IXCs were roughly offset by rates that were less than they could have been.¹⁷ Because Pacific clearly overcharged the IXCs by a substantial amount, the Commission should reject SBC's request for reconsideration of the refund requirement.

The Commission should also reject SBC's request that the Commission, "at a minimum offset the refund based on the percentage of primary lines PIC'd to a carrier and the corresponding percentage of non-primary lines the MO&O believes that IXC should have PIC'd to it."¹⁸ Such an approach is likely to lead to substantial inequities, as particular IXCs' business strategies may result in their market share of primary lines differing substantially from their market share of non-primary lines. As the Commission correctly concludes, "[i]t is not possible . . . to determine the amount that any particular IXC saved by paying the primary residential PICC instead of the higher non-primary residential PICC because Pacific Bell and GTE have not identified these lines."¹⁹

between January 1, 1998 and June 30, 1998.

¹⁷See Access Reform Tariff Order at ¶¶178,182.

¹⁸SBC Petition at 10.

¹⁹Access Reform Tariff Order at ¶179.

V. Conclusion

For the reasons stated herein, the Commission should deny SBC's petition for reconsideration of the Access Reform Tariff Order.

Respectfully submitted,
MCI TELECOMMUNICATIONS
CORPORATION


A handwritten signature in black ink, appearing to read "Alan Buzacott".

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July 14, 1998

STATEMENT OF VERIFICATION

I have read the foregoing, and to the best of my knowledge, information, and belief there is good ground to support it, and that it is not interposed for delay. I verify under penalty of perjury that the foregoing is true and correct. Executed on July 14, 1998.



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CERTIFICATE OF SERVICE

I, Vivian I. Lee, do hereby certify that copies of the foregoing Opposition to SBC Petition for Reconsideration were sent via first class mail, postage paid, to the following on this 14th day of July, 1998.

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